

EXECUTIVE CHAMBERS

HONOLULU

July 10, 2006

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 266

Honorable Members
Twenty-Third Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 266, entitled "A Bill for an Act Relating to Labor."

The stated purpose of House Bill No. 266 is to establish clear distinctions between mandatory, excluded, and permissive subjects of collective bargaining. However, the bill would not achieve the stated purpose and would blur the delineations that have historically existed in statute.

This bill is objectionable because it constitutes an unacceptable infringement upon management rights currently protected under section 89-9(d), Hawaii Revised Statutes. It attempts to overturn the case of United Public Workers, AFSCME, Local 646, AFL-CIO v. Hannemann, 106 Hawaii 359 (2005), the Supreme Court of Hawaii case that held the City and County of Honolulu's transfer of refuse workers from the Pearl City baseyard to the Honolulu baseyard was not subject to collective bargaining. The Hannemann case reaffirmed management rights as set forth in section 89-9(d). Historically, section 89-9, Hawaii Revised Statutes, has been recognized as the provision that sets into law protections that do not allow management to bargain away the right to direct its workforce and oversee governmental operations. This ensures that Public Employers are able to manage their operations efficiently and effectively to serve the public.

This bill erodes management rights by permitting negotiations over criteria governing promotions, transfers, assignments, demotions, layoffs, suspensions, terminations, discharges, and other disciplinary actions. Allowing

negotiations on the criteria management uses to act on matters such as layoffs, transfers, and assignments involves labor in the fundamental decision-making process of management. Whereas negotiating procedures may impact the means used to reach an outcome, negotiating the criteria could impact the nature of the outcome itself, thus interfering with the primary rights and obligations of public employers.

In permitting negotiations over assignments, this bill would adversely impact the delivery of services to the public, particularly in emergency situations. The bill provides for collective bargaining over a supplemental agreement or a memorandum of understanding and such mutual agreements cover individual employees and specific situations. Therefore, this bill would adversely impact the employer's ability to make assignments of specific employees and groups of employees.

The other Public Employer jurisdictions have advised me that this bill would critically impede their ability to manage their workforce and protect the health and safety of the public. State and county governments would face serious difficulties in carrying out civil defense, public safety, health, welfare, and other public service functions. For example, if this bill became law, it could result in restrictions on the deployment of lifeguards, emergency medical services personnel, and other health and safety staff who are expected to respond to and adjust their work locations and hours as emergencies and unanticipated events may dictate. Such restrictions could result in a lowering of services to the public and possibly delay response time in cases where immediate action by government is required.

Furthermore, this bill added a provision to section 89-9(d) stating that section 89-9(d) shall not be used to invalidate provisions of collective bargaining agreements in effect on and after June 30, 2007. However, this provision is confusing and

STATEMENT OF OBJECTIONS
HOUSE BILL NO. 266
Page 3

contradictory because it does not address issues covered in the collective bargaining agreements addressed in this bill, but attempts to cover issues which may or may not arise in the future.

For the foregoing reasons, I am returning House Bill No. 266 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read 'L. Lingle', written in a cursive style.

LINDA LINGLE
Governor of Hawaii